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FLIGHT OF AIRCRAFT OVER LAND AS TRESPASS ON THE LAND.

The case of Herrin v. Sutherland, 241 Pac. 328, 42 A. L. R. 937, decided by the Supreme Court of Montana, holds that one is guilty of trespass who fires a shotgun over the premises, dwelling and cattle of another, although he is not at the time upon such person's property. This decision seems to be founded upon the fact that such an act is an interference with the quiet, undisturbed peaceful enjoyment of the land by the owner. There is appended to the report of this case in 42 A. L. R. an extensive and very interesting note on the subject. The writer considers a number of English and American cases and we quote a portion of his note:

"The rule deducible from the authorities, suggesting a limitation upon the general phrase 'usque ad coelum' is that the justiciable right to the exclusive possession of land extends upwards to that point necessary for the safe and quiet enjoyment of the land, the balance being regarded, as far as private law is concerned, free.

"It was never determined by any decided case that ownership in land extended usque ad coelum, as no such case ever presented itself for determination. Consequently, the the rule enunciated, rather than being in contravention of the common law, is rather an exemplification of its all-pervading excellence in adapting itself to new times and situations.

"This principle of law, that ownership or inviolability of land extends upwards so far as necessary for the sale and quiet enjoyment of the land, like other common law principles, recommends itself, because, though generally expressed, individual justice is attainable by its application; that is to say, the extent of the right of the landowner to exclusive possession in the air is not arbitrarily fixed, but is dependent upon the facts and circumstances of the particular case. The height of the column of air necessary for the safe and quiet enjoyment of a towering skyeraper differs from that required for farm land, yet the rights of litigants in both instances may be justly adjudicated. This principle protects the rights of those in possession of land on the one side, and serves the interests of society on the other, by permitting the reasonable development of aerial navigation.

"The question of an aeronaut's liability in trespass for flying over the land of another seems never to have been passed upon in any reported case in America.

"However, in the unreported case of Com. v. Nevin, the court of quarter sessions of Jefferson County, Pennsylvania, in April, 1922, according to 71 Pa. L. Rev. 88, held that, under a penal statute making a trespass upon lands which have been posted with 'no trespass' signs an offense against the commonwealth, an aeroplane flight over posted lands is not an unlawful trespass punishable under the act.

"In England the common-law principle stated above has been declared by the British Air Navigation Act, 1920, Sec. 9 (1), which provides that 'no action shall lie in respect of trespass . . . by reason of the flight of aircraft over any property at a height above the ground . . . which is reasonable.'

"Though the civil law of France adhered to the doctrine of usque ad coelum, yet the courts of that country have taken the same view; that is, that though any invasion of the air which may render the use and occupation of the land dangerous or inconvenient is actionable, a landowner may not complain of intrusions in the air which do not have that effect.

"Thus, a Paris court decided that an owner of land has no such interest in the air above the surface thereof as to be legally entitled to prevent an aviator from making a flight over his land. Cited 53 Am. L. Rev. 732.

"And a decision of a Paris court (probably the same one cited above) is thus reported in 18 Va. L. Reg. 383: 'The case in question involved the right of a landowner to say whether an aeronaut might fly over his land. A number of landed proprietors in the vicinity of the Buc aerodrome brought suit against Maurice Farman, alleging that they had been materially damaged by the frequent flying over their lands, horses being frightened and people annoyed by the noise of the engines, not to speak of damage done to fields in the landing of machines. The attorney for Farman contended that ownership of the land did not carry with it the right to the air above; else a landlord might claim the very stars in the sky. He admitted that under the French law everything above and below the surface belongs to a landlord, but he did not admit that this construction included air. The court awarded $100 damages to one farmer whose land had been damaged in a landing, but declined to pass on the larger question of prohibiting future flights, on the ground that aerial navigation had not yet been regulated by the law courts.'

"This same doctrine is recognized by the German Imperial Code of 1900, Sec. 905, as cited in 71 Pa. L. Rev. 89, which provides: 'The right of the owner of a piece of land extend to the space above the surface. . . . The owner may not, however, forbid interference which takes place at such a height . . . that he has no interest in its prevention.'

"The Swiss Code contains a provision similar to that of the German, Davids, Motor Vehicles, 290.

"The division of a moot court, composed of lawyers sitting as the appellate division of the State of New York at Rochester, New York (1912), reported in 19 Case and Comment 681, holding that at common law the passing of an aeroplane overland at a height of 100 feet constitutes a trespass to the land, on the theory that ownership of land extends upwards to infinity, may be of interest."

NOTES OF IMPORTANT DECISIONS

BRAKEMAN CUTTING OUT EMPTY CAR ENGAGED IN INTERSTATE COMMERCE.—In Lierness v. Long Island R. Co., 216 N. Y. Supp. 656, the Court, in holding that a brakeman cutting out an empty car from a freight train containing loaded cars from other states was engaged in interstate commerce, said:

"Testimony on behalf of the plaintiff, given by an employee of the defendant, whose work required him to proceed to the different stations of the defendant and to check up the freight cars and 'keep them moving,' established that the freight yard in question received large numbers of freight cars from 'floats' which transported them in the harbor and rivers surrounding Manhattan Island from ports in New Jersey, and which cars were conveying freight from various foreign states; that the car here involved was unloaded in this yard at an early hour that morning from a float of the Lehigh Valley Railroad, admittedly a foreign railroad company and the owner of this car; and that with this particular car there were twenty other freight cars received from the Lehigh Valley Railroad Company's floats. Although the car in question is claimed to have been empty, it was attached to cars that were loaded, and which were intended for a destination on Long Island sent from foreign states. The question whether the plaintiff was engaged in interstate commerce at the time of the injury was submitted to the jury, and I think the evidence was sufficient to permit them to find that he was so engaged.

"'A brakeman on an intrastate car in a train consisting of both intrastate and interstate cars, who is engaged in cutting out the intrastate car so that the train may proceed on its interstate business, is while so doing engaged and employed in interstate commerce, and may maintain an action under the Employers' Liability Act.' So held, as per syllabus, in New York Central R. R. v. Carr, 238 U. S. 260, 35 S. Ct. 780, 59 L. Ed. 1298."

LIABILITY OF INSURER WHERE FIRE CAUSES PARTIAL LOSS BUT RESULTS IN TOTAL LOSS OF PROPERTY.—In the case of Rutherford v. Royal Ins. Co. (C. C. A., 4th Cir.), 12 F. (2d) 880, it appeared that plaintiff had insured a building against loss by fire with the defendant insurance companies in the amount of $19,000. The building was worth $21,000. Thereafter a fire occurred which caused physical damage to the build-

ing in the sum of $4,000. The District Court directed a verdict for this amount and the insured appealed. It further appeared that the public authorities of the city in which the building was located ordered the insured after the fire to raze and remove the building at once because it was too weak and frail to be rebuilt. The insurance company contended that the only loss for which they were responsible was the loss caused by the fire; that the necessity for tearing down the building was not caused so much by the fire as by the fact that the building was an old and weak building before the fire, so that the condition that compelled the destruction of the building and prevented its repair existed prior to the fire.

The appellate court, however, reversing the court below, held that it was the fire that was the immediate cause of the total destruction of the building and that the insurance company was therefore liable for the full amount of the insurance.

We quote a portion of the Court's opinion:

"The question in the case, which is one of fact, is whether, as a result of the fire, the building was so damaged that it could not be repaired under the building laws of the city, and consequently had to be torn down, or whether the fire merely revealed and did not cause the damaged condition. If the fire resulted in the condition which necessitated the destruction of the building, and which, because of local ordinances, made impossible its repair, the insured was entitled to recover as upon a total loss. The rule, as we understand it, is well stated in Corpus Juris as follows:

" 'If by reason of public regulations as to the rebuilding of buildings destroyed by fire such rebuilding is prohibited, the loss is total, although some portion of the building remains which might otherwise have been available in rebuilding. So, also, if the insured building is so injured by the fire as to be unsafe, and is condemned by the municipal authorities, the loss is total' (26 C. J., 351; Monteleone v. Royal Ins. Co., 47 La. Ann., 1563, 18 So., 472, 56 L. R. A., 784; Hamburg-Bremen Fire Ins. Co. v. Garlington, 66 Tex., 103, 18 S. W., 337, 59 Am. Rep., 613; Larkin v. Glens Falls Ins. Co., 80 Minn., 527, 83 N. W., 409, 81 Am. St. Rep., 286; Hewins v. London Assur. Corp'n, 184 Mass., 177, 68 N. E., 62; King v. Niagara Fire Ins. Co., 234 Mass., 301, 125 N. E. 572).

"The defendants contend, however, that this rule has no application here, because, they say, the condition which brought about the destruction of the building and prevented its repair was not the result of the fire, but of conditions existing prior thereto. Of course, if the fire did not cause, either in whole or in part, the condition which necessitated the destruction of the building and prevented its repair, defendants would not be liable as upon a total loss. But, on the other hand, if, because of the antecedent condition, the fire did cause a total loss, by rendering the building unfit for occupancy and incapable of being repaired, the defendants would be liable as upon a total loss, even though it should appear that but for the antecedent weakened and impaired condition the fire would not have produced such result. In such case 'it makes no difference that the condition after the fire is due in part to causes existing before' (14 R. C. L., 1303).

"The case of Monteleone v. Royal Ins. Co. (supra) involved a similar situation to the case at bar, and the rule applicable and the reason therefor are well stated in that case as follows: 'Is not the assured entitled, under any interpretation of the policy, to some other and better indemnity for a loss by fire than the cost of repairs on the building, that cannot be made safe by any repairs? A total loss may be claimed though the walls of a building stand and the elements that composed it be not entirely consumed. It is the same, we think, when the insured building cannot be made secure by repairs. Nor will it make any difference in such cases of constructive total loss that the condition after the fire is due in part to causes existing before. Such cases are deemed the remote, not the proximate, causes of the loss. The insurer taking a risk on an old and in this instance an insecure building incurs the obligation to pay for a total loss if the injuries by the fire, combined with antecedent defects, make repairs impracticable. The value of the old building at the time of the fire is the measure of the indemnity promised by the policy' (47 La. Ann., 1568, 18 So., 473, 56 L. R. A., at 789).

"In this case there is no dispute as to the fact that insured sustained a total loss of her building. The dispute concerns the cause of the loss. It seems to us that the evidence warrants the conclusion that the loss was occasioned by the fire. Prior to the fire the building was standing uncondemned. It was filled with tenants, from whom Mrs. Rutherford was receiving rent amounting to $5,000 per year. Defendants admit that at that time it was worth $21,000. As a result of the fire the building was no longer habit-

able. It immediately ceased to bring in rents, repairs were forbidden, and it was condemned and ordered to be torn down. It needs no argument to show that Mrs. Rutherford sustained a total loss of her property, and a reasonable inference is that she sustained it as a result of the fire. Even though the building was weak and frail beforehand, nevertheless if, but for the fire, it would have continued to have value as rentable property, and if it was so damaged by the fire that it ceased to have any value whatever, the fire was the proximate cause of the loss, the producing cause, without which it would not have occurred.

"In view of the admission by the defendants that the sound value of the building immediately prior to the fire was $21,000, it would seem that they are precluded from contending that its admittedly worthless condition immediately following the fire was due wholly to its antecedent condition. This admission, when considered with the undisputed evidence as to the worthless condition after the fire, would indicate that this condition was the result of the fire occurring in an old and insecure building, and that the fire did not merely reveal the condition of a building already worthless, but in conjunction with antecedent defects, rendered worthless a building which prior thereto had a value of $21,000. At all events these were circumstances to go to the jury, with the other evidence, on the question as to whether there was a total loss of the building as a result of the fire."

FAILURE TO ASK PRISONER IF HE HAS ANYTHING TO SAY WHY SENTENCE SHOULD NOT BE PRONOUNCED AS REVERSIBLE ERROR.—The Supreme Court of Wisconsin, in Boehm v. State, 209 N. W. 730, holds that the trial court's failure before pronouncing sentence to ask defendant if he had anything to say why sentence should not be pronounced, is not prejudicial error.

We quote from the Court's opinion:

"Error is next assigned because the court, before pronouncing sentence, did not ask the defendant if he had anything to say why sentence should not be pronounced. Such failure was held to constitute reversible error in French v. State, 85 Wis. 400, 55 N. W. 566, 21 L. R. A. 402, 39 Am. St. Rep. 855, and it was said to be something more than a mere formality in Re Carlson, 176 Wis. 538, 186 N. W. 722. Upon mature reflection it seems utterly hopeless to attempt to state a reason for regarding such a failure as prejudicial error. The practice or custom seems to have originated in England at a time when defendants charged with certain crimes were not represented by counsel. The practice has obtained quite generally in this country, but it seems to have nothing more to support it than its traditionary existence. It is a mere custom and nothing else. In this day, when defendants in criminal cases are represented by counsel—by counsel furnished by the state if they are unable to procure them—who understand their legal rights and exert every effort to preserve them, who move in arrest of judgment and for new trials, and perfect their appeals to this court, how can it be said that the mere omission of the traditionary question, 'Have you anything to say why judgment should not be pronounced?' constitutes anything like a substantial right? The proceeding has been characterized as 'ridiculously idle' (Warner v. State, 56 N. J. Law, 686, 29 A. 505, 44 Am. St. Rep. 415), as 'a most absurd, frivolous and idle ceremony' (State v. Hoyt, 47 Conn. 518, 36 Am. Rep. 89), and in People v. Palmer, 105 Mich. 568, 63 N. W. 656, it is said, 'Whatever good purpose this practice may have served in England when parties charged with crime were not allowed counsel, it is now a mere idle ceremony.' It is time that the law be rid of this technicality, which rests only in tradition and is barren of any substantial benefit to the defendant. We hold that failure to propound the question to the defendant did not constitute prejudicial or reversible error. We do not condemn the custom which generally prevails with the trial judges of this state. It is quite possible that in response to this question the trial court often obtains information which is of aid in fixing a just and intelligent sentence. But it is just as possible also that courts are often misled and imposed upon by the crafty criminal who understands the frailties, not only of human nature in general, but the peculiar weaknesses of individual men whose attitude toward life, their foibles, and fancies are of more or less concern to him who is about to be sentenced."

Lord Darling, a celebrated English barrister, was addressing the court when he became so engrossed in his case that he completely overlooked the fact that it was past time for adjournment. The court asked: "Mr. Darling, have you noticed the position of the hands of the clock?"

Darling: "Yes, sir; but with respect, I see nothing to cause anxiety. They seem to me to be where they usually are at this time of the day."—Case and Comment.

FLORIDA'S DELUSIVE SPECIAL TAX EXEMPTION

By George Vaughan,
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Does Florida's constitutional ban upon income and inheritance taxes offer a sound inducement to outside capital?

The renunciation in advance, whatever the stress of emergency or need, of all resort to income or estates as taxable subjects is but a superficial "bait." And this is true, though good faith on the part of her citizenship is of course assumed. It means that Florida will temporarily forego the revenue she might derive from certain special sources she never yet has tapped. But it does not pledge the state to refrain from expenditures for the necessary governmental functions.

Nor will she as a progressive commonwealth forego good roads and modern schools and colleges. Her hospitals and shelter for the disabled and infirm she will no doubt continue to support.

All these and other proper benefits cost money in increasing sums. How will the needed funds be raised?

Florida, like all her sister states, now looks for the bulk of her revenue to that major source, the general property tax. Government statistics show that in 1922 she derived 83.3% of all public funds from a direct levy on general property. The proportion of taxes so derived from general property by all the states in the Union, considered collectively, was 78.7%.

The states, of course, resort in different degrees to special forms of taxation. The percentage of taxes levied under special forms in all the states in 1922 was 21.3%; in Florida, 16.7%; in Arkansas, 32.7%.

The inheritance tax was in vogue in all the states but two. Its importance, however, was relatively slight, since of the total revenue the average proportion derived from that source was only 1.6%. In Arkansas it was 1.5%. The yield in state income was about the same—1.5% for the general average, none operating in Arkansas or Florida. In 1922 Florida collected in taxes and assessments of all kinds $36,066,000, which, distributed over her 1,024,000 population, amounted to a per capita contribution of $35.22. In the same year Arkansas collected likewise in taxes of all forms $24,813,000, or a per capita of only $13.87. Which means that when the Florida citizen drops into the public till his silver dollar, his cousin in Arkansas contributes less than forty cents!

The $381,000 of inheritance taxes collected in Arkansas that year represented only 21 cents of the $13.87 total per capita load. The same amount of inheritance taxes in Florida would have added only 37 cents per capita to her already heavy load, raising it from $35.22 to $35.59, an increase of slightly over 1% (1.05%, to be exact).

If Florida elects to remain in her present position and run her governmental machine without the use of income and inheritance levies, she must inevitably, if she grows or expands, increase the weight of her already relatively burdensome property tax.

Indeed, the upward trend appears in her record for the later years of 1923, 1924 and 1925, where her revenue receipts have steadily increased, as per data from U. S. Department of Commerce:

FLORIDA STATE REVENUE RECEIPTS

	Amount	*Per Capita*
1922	$ 8,588,000	$ 8.39
1923	12,097,549	11.56
1924	14,345,275	11.69
1925	17,155,408	13.65

The conclusion then must follow, that while Florida may spare her mushroom citizenship the pain of paying income taxes while alive or inheritance taxes dead, she will demand of them a greater and a heavier share of taxes and assessments annually levied on their property investments in that state.

So it is conceivable that the only immigrant who is really to be benefited by the

boosted constitutional exemption is the capitalist who removes his legal domicile to Florida, hides his securities in a safe-deposit box and hies him out to the golf links to enjoy the balmy breezes and perennial salt air. It will be fine, indeed, to have such gentlemen adorn the landscape, but their benefit to the community at large is questionable indeed.

The moment they withdraw their floating capital from its hiding place and invest in Florida real estate the new gained property will at once be burdened with a tax far in excess of the average borne throughout the country. Moreover, this abnormal burden will gradually increase as the years go by.

ARMY AND LAW

By Captain Elbridge Colby,
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We live in a world of separate nations, each jealous of its sovereignty, and its own interests and policies. The history of the world has been a history of wars. Various attempts at international organization and international co-operation have been made, and various attempts to establish an international legal system that will prevent wars. And yet if the teachings of history are worth anything, they are that no method has as yet been devised to obviate wars. As James Brown Scott has said:

"At the end of the greatest of wars attempts have been made to devise some scheme whereby a recourse to arms might be less likely to occur, if it could not wholly be avoided. The Thirty Years' War is responsible for the *Nouveau Cynee* of Emeric Cruce, the *Law of Peace and War* of Hugo Grotius, not to speak of the *Great Design* which Scully foisted upon his master, the good King Henry IV. The wars of Europe culminating in the Wars of the Spanish Succession and ended by the Treaties of Utrecht (1713-1714) and of Rastadt (1714) produced the *Project of Perpetual Peace* of the Abbe de Saint Pierre. The wars of the French Revolution following these at the space of a century gave birth to the Holy Alliance. The World War, a hundred years later, has brought forth a League of Nations, conceived in the same generous spirit. Will history repeat itself? History alone can tell."[1]

Great powers with a vivid sense of nationality and powerful popular support, are disposed to seize what they believe to be within their grasp. Resistance by force means war. Because nations are naturally selfish, wars continue. In such a world, the friendship of nations is an empty phrase when ambitions clash. International law is an unreliable support in time of trouble. Most wars are caused by political differences and by economic rivalries, and the points at issue are not justiciable. In such matters nations are unwilling to submit to arbitration; their arbitration treaties specifically exempt such occasions. In such issues the assizes are held on the battlefield and the arbitrament is that of war, judging all by the equity of the sword and the truth of the rifle. In such a world the international lawyers themselves admit their impotence; they tell the nations to look elsewhere for aid.

"The right of self-preservation is the first law of nations as it it is of the individual. A society which is not in a condition to repel aggression from without is wanting in its principal duty to the members of which it is composed and to the chief end of its institutions."[2]

"One of the essential rights inherent in sovereignty and the independence of states is that of self-preservation. This right is the first of all absolute and permanent rights and serves as a fundamental basis for a great number of accessory, secondary, or occasional rights; it constitutes, it may be said, the supreme law of nations as well as the most imperative duty of citizens, and a community which neglects the means to repel aggressions from without fails in its moral obligations to the members which compose it."[3]

We stand in the midst of a world we did not make, the world as it is. In that world we must maintain the integrity of our sov-

(1) Preface to W. P. Cresson, The Holy Alliance.

(2) Phillimore, 2d ed., I, 252.

(3) Calvo. 5th ed., I. 352.

ereignty and protect the institutions of self-government which our nation was founded to perpetuate on this hemisphere. The duty of national self-defense is clear.

The federal government of the United States was formed for reasons stated in the preamble to the Constitution, three of the six reasons stated being:

a. To secure the blessings of liberty to ourselves and our posterity.
b. To insure domestic tranquility.
c. To provide for the common defence.

Our military organization is founded upon Constitutional law, and is carefully hedged about with restrictions to prevent in this country that abuse of armed power which had been the pain and peril of so many of the common people of dynastic Europe. The President was made Commander-in-chief of the regular army, but was permitted to command the state militia only when in the service of the United States, Gerry of Massachusetts, and Dickinson of Pensylvania, insisting in the convention which framed the document that the states should never lose their control over the militia and that the President should be prevented letting loose troops on a state without its own consent. Although Congress was given authority to raise and support armies, the perils of continuing militarism were avoided on the suggestion of Mason of Virginia, who saw to it that the authority was qualified by restricting money appropriations for the support of the army to two-year periods. There were also included definite restrictions as to the quartering of troops in the houses of inhabitants. The colonials had not forgotten the troops quartered in Boston in 1775, nor had they forgotten the indictments against James II, set forth in the Bill of Rights of 1688 by their ancestors, nor the device of the British Mutiny Act of 1689, necessitating an annual re-enactment so as to keep the military always subservient to the popular will of the legislature. The dependence upon the militia, evident in the Constitution, was also an influence out of the past, even though the militia of the separate sovereign states was only to the raised with the consent of Congress. The militia was considered the main bulwark of national strength, to be called upon to execute the laws, suppress insurrections, and repel invasions. Standing armies were feared. They had too much of the old flavor of royal troops royally maintained. In England, opposition toward them continued right down to the 1790s, although the splendid operations of such troops under Marlborough did much to establish them in favor. In the France of the Revolution, the royal regiments were distrusted as much as "l'Autrichienne" and the National Guard supported from public funds was soon the safeguard of the new republic. The American Constitution also provided that the federal government should guarantee to each state a republican form of government and should protect them against invasion; but federal interference in state affairs was limited to occasions on which the legislature of the state asked for help, or the governor, when the legislature was not in session. There was hesitancy about making the President Commander-in-chief, for fear he might establish himself as a dictator or as a king; and again hesitancy, when the bill establishing the War Department was before Congress, August 7, 1789, about the executive powers of the Secretary of War. The power to declare war was purposely put in the hands of Congress, to prevent hasty entrance into conflict. It was said in the Constitutional Convention, as Bancroft records:

"The world had been retarded in civilization, impoverished and laid waste by wars of the personal ambition of its kings. The committee of detail and the convention, in the interest of peace, intrusted the power to declare war, not to the executive, but to the deliberate decision of the two branches of the legislature, each of them having a negative on the other, and the executive retaining his negative on both."

Indeed, implicit in every clause of the Constitution is human interest, human history, and human intent. Every section was

written to assert and perpetuate a right, or to prevent a wrong, the army phrases and clauses no less than the others. Through them and behind them, traced to their sources and the reasons for their writing, there appears a story of human tragedy, human suffering, and human desire. Carefully prescribing certain fundamental principles with regard to the raising and the employment of troops, the Constitution still was largely concerned with the need for troops to fulfill the purposes for which it was written and adopted. Those who framed that Constitution were alive to the rights of the people, to the rights of the states, and to the duties of the nation. The Constitution has been the basis of the defense policy of a free, democratic people who wish to maintain their freedom and independence in a democratic fashion.

As Commander-in-chief the President is empowered to direct the movements of the forces placed by law at his command to conquer and subdue an enemy, even invading hostile territory for that purpose; but, though he can occupy temporarily, he cannot annex new lands.[4] He follows such rules and regulations as Congress enacts under the Constitution, and adds to them such interpretations as Congress permits him, and his additional regulations have the full force of law.[5] He appoints officers, but his appointments must be confirmed by the Senate.[6] He and he alone has the authority to call the militia into federal service, and is the judge of the circumstances which the Constitution lays down as necessitating such a call.[7] The President is the actual head of the army. Within the limits set by the Constitution for the employment of armed forces, and further within the limits set by Congress in minor and occasional matters, he controls the army. He has two forces under his control, the Regular Army which he manipulates like an executive department, and the State Militia, which he can call out in certain emergencies. This state militia was supposed to be established by the states and organized as Congress might direct, under the Constitution and under the old Militia Act of May 8, 1792,[8] which provided that all able-bodied citizens of proper age should be enrolled in local military units under local company commanders, should furnish their own muskets or firelocks and other equipment, and should appear "When called out to exercise or to service." The enrollment was never fully carried out nor have there ever been adequate exercises for "all able-bodied citizens." Yet this militia was what was depended on to help suppress the Whiskey Rebellion of 1794, Washington himself leading the forces furnished by the governors he had asked for help. This militia was what was depended upon to repel invasions in the war of 1812. Some units were organized locally as what we now call National Guard troops, and with the identity of organizations maintained and preserved, entered federal service for limited periods of time as units, in the war of 1812 and to the number of 475,000 in the Civil War. To supplement these forces, and in some instances to replace them, there were created by Congressional enactment, forces known as National Volunteers. The War with Mexico of 1846-1848, and the Spanish War of 1898, were fought with such troops, who also appeared two million strong altogether during the Civil War. These National Volunteers were in many cases made up of individuals from existing militia or guard units, but they served directly under the national government and not through the medium of their state governments. The call was to individuals. They were mustered as individuals, rather than as units provided by the state governments. When we declared war against Germany in 1917, we expanded our regular forces by special enactments of Congress, we brought Guardsmen into Federal Serv-

(4) Fleming v. Page, 9 How. 603.
(5) Kurtz v. Moffitt, 115 U. S. 503.
(6) Scully v. U. S., 193 Fed. 185; McBlair v. U. S., 19 Ct. Cl., 528.
(7) Martin v. Mott, 12 Wheat. 19.
(8) 1 Stat. 271.

ice, and passed the Selective Service Act of May 18, 1917,[9] to increase temporarily the military forces by a nation-wide draft upon manpower far more inclusive than the desultory draft of Civil War days.[10] Then to facilitate war administration, the War Department amalgamated all forces into one army—"The United States Army." After the war, the army was demobilized, with the exception of those holding regular commissions and of those enlisted soldiers who had entered the service for a term of years rather than for the war. Then came the re-orgazination, effected by the National Defense Act of 1920, providing for the one Army of the United States in three components.[11] The regulars were recruited to a normal strength; the separate states built up their militia or National Guard units; and the Reserve System was put into effect. Every step in the organization of the army has been according to law. Its size is restricted by annual Congressional appropriations. Its very principles of organization are dictated in the Act of 1920, which also limits its numbers. Its courts-martial system is prescribed by Congress. Its soldiers are amenable to civil law as well as to military law.[12] It is subject to the civil authority at every turn, and military courts cannot try civilians except in grave emergencies when the other courts are not open.[13] So hedged and bound about by restrictions of law;[14] so subject to legal processes to correct abuses within the military organizations; so closely allied to the free principles of our democratic people—our army is truly representative of the American spirit. Its officers and men conform to the people from which they come and for whom they have sworn to serve the flag and defend the nation. The present American military system rests upon a small standing army, the Regulars, upon a larger force of state militia, National Guard, and upon a still larger skeletonized Reserve of patriotic citizens willing to give voluntarily of their time to preparation for important service toward national defense in time of emergency. It rests, by and large, upon the interest, enthusiasm and energy of the citizens of the country. The legal means of action are set forth for the preparation, the partial training, and the future use of an effective citizen army in full touch with the current state of American opinion and the current conditions of American life. Vigor must be drawn from below; not from the military superiors above. The American people have established their legal means of military action, depending chiefly upon decentralized effort, making the army always the servant of the people. Upon the American people rests—and it should rest upon them as self-governing citizens—the square and solid duty of national defense.

(9) 40 Stat. 76.

(10) 12 Stat. 731.

(11) 41 Stat. 759.

(12) Mitchell v. Harmony, 13 How. 115; Grafton v. U. S., 206 U. S. 333.

(13) Ex parte Milligan, 4 Wall. 2.

(14) E. g. restrictions on use of troops as posse comitatus, 20 Stat. 152; restrictions on assignments of General Staff officers, Act of June 4, 1920, last paragraph of Section 5, 41 Stat. 759; and restrictions as civil officers, Act of Feb. 28, 1877, R. S. 1222.

Autoist—Where do you get auto parts around here?

Native—At the railroad crossing.—Laughter.

The witness had been cautioned to give more precise answers.

"We don't want your opinion of the question," the judge told him. "We want it answered—that's all."

"You drive a wagon?" asked the prosecuting attorney.

"No sir, I do not," was the decided reply.

"Why, sir, did you not tell my learned friend but a moment ago that you did?"

"No, sir, I did not."

"Now, I put it to you, my man, on your oath. Do you drive a wagon?"

"No, sir."

"Then what is your occupation?" asked the state's attorney in desperation.

"I drive a horse," was the reply.

Policeman (producing notebook)—"Name, please."

Motorist—"Aloysius—Alastair—Cyprian—"

Policeman (putting book away)—"Well, don't let me catch you again."

Clara—"Is it true that young Nutley proposed to you and that you rejected him?"

Sara—"He proposed. But I didn't exactly reject him. I told him that any time I wanted to make a fool of myself, I'd let him know."

INSURANCE—INSURABLE INTEREST

MORRIS v. FIREMEN'S INS. CO. OF NEW JERSEY

247 Pac. 852

(Supreme Court of Kansas, July 10, 1926.)

One who buys an automobile from any person other than a regular dealer having an established place of business, without requiring the seller to be identified by two persons of the buyer's acquaintance, and without requiring a bill of sale to be executed by the seller, with his name and address, and giving an accurate and comprehensive description of the car, and particularly its correct engine number, and containing also the signatures and addresses of the identifying witnesses, has no insurable interest in such automobile against its theft.

Ralph T. O'Neil and John D. M. Hamilton, both of Topeka, and Ray S. Pierson, of Burlington, for appellant.

L. H. Hannen, of Burlington, for appellee.

DAWSON, J. This was an action on a policy of insurance purporting to protect an automobile against theft. The main defense was that plaintiff had no insurable interest in the property.

The ostensible facts were these:

Plaintiff resided on a farm about four miles north of Burlington, county seat of Coffey County. In the autumn of 1923 he let it be known that he wished to buy a car. Several dealers from nearby towns called on him, and exhibited their cars and quoted prices. A stranger also called on him, giving his name as that of W. K. Jones, and pretending to be a salesman and representative of the French Motor Company of Osage City, a town 30 miles from plaintiff's residence. Jones called four times, at first offering to sell a second-hand car, but eventually he sold plaintiff a new Ford sedan for $773, which was $3 less than the price quoted by the Ford dealer in Burlington, and $1 less than the price asked by the Ford dealer in Melvern, a little town a few miles further away. Jones delivered the car at plaintiff's farm. Plaintiff testified that he paid the entire price in cash, as he had no confidence in banks, and had accumulated the money in the course of a year, and kept it in his home. He did not take a receipt for the money, nor did he require or obtain from Jones a bill of sale for the car. Jones disappeared, and has never since been heard of. Jones had no connection with the French Motor Company of Osage City, and the car had never passed through its hands. Plaintiff applied for a license, and in due time received it from the secretary of state. He also took out a policy of insurance issued by defendant to protect the car against theft. A month later the car was stolen, and, like Jones, it has never since been heard of. Plaintiff thinks he correctly read the motor number on the car, and on that supposed number, 8259052, the automobile license was issued and the insurance policy executed. It developed, however, that no Ford sedan ever bore such number. Those figures were the engine number of a new Ford one-ton truck purchased from a regular Ford dealer in September of the same year by a farmer in North Carolina, and still owned by him.

In his petition plaintiff admitted that he had never received a bill of sale for the car from Jones. Attached to his petition was a copy of the insurance policy, which, among other matters, provided:

"This policy is subject to additional conditions printed on back hereof.

"Perils insured against * * *

"(c) Theft, robbery or pilferage. * * *

"Warranties by the Assured.

"The assured's occupation or business where the subject of this insurance is used in connection therewith, the description of the automobile insured, the facts with respect to the purchase of same, the uses to which it is and will be put, and the place where it is usually kept, as set forth and contained in this policy, are statements of facts known to and warranted by the assured to be true, and this policy is issued by the company relying upon the truth thereof. * * *

"Title and ownership. This entire policy shall be void unless otherwise provided by agreement in writing attached hereto;

"(a) If the interest of the assured in the subject of this insurance be other than unconditional and sole ownership. * * *"

Defendant's answer denied plaintiff's ownership of the automobile, raised the point that plaintiff did not have an insurable interest in it, and stressed the clause in the policy touching "warranties by the assured," quoted above, and alleged that plaintiff had breached those warranties by giving defendant an incorrect description of the car, particularly with reference to the number of the motor.

On this joinder of issues the cause came on for trial. Defendant's objection to the introduction of evidence was overruled. The jury returned a verdict for plaintiff for the full amount of the policy, and judgment was entered accordingly.

Defendant appeals, assigning various errors which chiefly center about the question whether plaintiff had an insurable interest in this automobile.

The statute (R. S. 8—117) makes it unlawful for any person to buy an automobile from anybody except a regular dealer having an established place of business, unless the seller is identified by two acquaintances of the buyer, and unless he obtains from the seller a bill of sale in writing, reciting a description of the car, its make, style, year of model, and engine number, and giving the full name and address of the seller, and signed also by the identifying witnesses and giving their addresses. If the automobile which is the subject of the purchase and sale is a second-hand car, the buyer, in addition to the provisions of R. S. 8—117, summarized above, must notify the county sheriff and a police officer of the nearest town of his purchase, and give those officials a comprehensive description of the car. R. S. 8—118.

One cannot read these statutes without coming to the conclusion that their purpose was to minimize the possibility of permanently depriving owners of automobiles of their property by theft. A car is easily stolen. Its speed will carry its taker hundreds of miles away in one round of the clock. And so the Legislature very properly has prescribed this statutory mode for the sale, exchange, or barter of automobiles to curtail the chances of their successful larceny and sale by thieves, and for enlarging the possibilities of recovering and restoring to their owners automobiles which are stolen. The statute also is designed to protect gullible people from buying stolen cars and from irresponsible vendors of whom nothing is known, except what they choose to say or pretend about themselves. In Miller v. Insurance Co., 117 Kan. 240, 242, 230 P. 1030, 1031 (38 A. L. R. 1113), in discussing the Missouri statute on this general subject, it was said:

"If he had caused a record of the transfer to be made with the secretary of state inside of five days the insurance company would have had opportunity to protect itself against Cohen's fraud. One purpose of the statute is obviously to make it difficult for a thief to dispose of a stolen car, but it has other beneficial effects, one of them being to prevent the tricking of a would-be purchaser into paying for a car after his supposed vendor has parted with the title. If, as the evidence tends to show, the insurance company was tricked out of its money by Cohen through a device which was made available to him because of the failure of the plaintiff to take the steps required by the statute in order that his purchase should be valid, the superior equities are clearly with the insurance company; it is within the protection of the statute, and the provision that a sale of a car made without an indorsement and delivery of the registration certificate, and without a record of the change of ownership with the secretary of state, shall be fraudulent operates in its favor against the plaintiff."

Assuming the truth of plaintiff's evidence touching his acquisition of this automobile, as we are bound to do, since the jury gave it full credence, nevertheless he did take that car from the elusive Jones in total disregard of the statute designed to protect him against being defrauded, and designed to restrict traffic in stolen automobiles and the losses attendant thereon, for the benefit of everybody including the defendant insurance company. It, too, is entitled to the protection of the statute, since no inconsiderable factor in determining its insurance rates is based upon the percentage of recoveries of stolen automobiles covered by its policies through the efficacy of the statute governing their transfer and sale. By buying this car from a stranger, not a dealer having an established place of business, without knowing his address, without his being identified by available witnesses, without a bill of sale giving an accurate description of the car, plaintiff rendered it virtually impossible for this defendant company to recoup any sum it might pay him for its theft. Without these clues which the statute required plaintiff to take and preserve when he bought the automobile, the defendant has no chance to recover the stolen property, and the state has little chance to bring Jones to justice for defrauding the plaintiff, or to capture and punish the thief who deprived plaintiff of it.

In view of this, can we say that plaintiff had an insurable interest? The sale to him was illegal. Was it also void? The statutes of some states expressly so state. Rev. Stat. Mo. 1919, § 7561, cited in Motor Co. v. Warren, 113 Kan. 44, 213 P. 810. Our statute does not expressly say so, but, so far as concerns parties like defendant, who had a right to contract on the assumption that the statute concerning the transfer and vesting of title had been complied with, logic and justice would seem to require a similar conclusion to be deduced from a breach of it. In Insurance Co. v. Todino, 111 Ohio St. 274, 276, 145 N. E. 25, 38 A. L. R. 1118, where a husband had given his wife an automobile, and had caused

the insurance policy protecting the vehicle from theft to be indorsed to her, but had failed to give her a bill of sale as the statute required, it was held that she had no insurable interest in the car. That statute did not expressly declare that a sale made in violation of its terms was void. It did provide that "any such bill of sale not verified before delivery shall be null and void." The opinion is instructive and convincing. In part, the Ohio court says:

"The authorities are plentiful that courts always look to the language of a statute, its subject-matter, and the wrong or evil it seeks to remedy or prevent, or, in other words, the purpose sought to be accomplished by its enactment, to determine whether a transaction governed by such statute is void if the statutory requirements be not followed, or whether (there being no direct provision making such transaction void) the penalty provided by the statute for the failure to observe it is all that is to be exacted.

"A distinction has been recognized between statutes designed for the protection of the public and those designed primarily for the raising of revenue. The courts are in accord that where a statute is enacted to protect the public against fraud or imposition, or to safeguard the public health or morals, a contract in violation thereof is void, even though a money penalty also is exacted.

"The statute under consideration is not a revenue raising measure. No fees of any consequence are paid or are payable. It was not designed to prevent the sale of automobiles. Its sole purpose was to prevent, in so far as possible, the stealing of automobiles, which, because of the opportunity to commit the crime and escape detection, unfortunately had become, and is still, so prevalent as to be classifiable as a near industry. The declaration of the General Assembly which passed the act is that its purpose was and is to prevent traffic in stolen cars.

"In view of the requirement of the statute that a bill of sale shall be verified before it can have force and effect, how can it be successfully argued that no bill at all may have force and effect? Omission of action is not action. Nonperformance is not performance. Failure to do a thing is not the doing of it. The absence of a paper is not the equivalent of a paper. As title cannot pass without a verified bill of sale, and in this transaction no bill of any kind or character was executed by the donor or filed by the donee (plaintiff), how can it be claimed that at the time of the theft plaintiff was the sole and unconditional owner of the car, within the meaning of the policy?" Pages 276, 277, 278 (145 N. E. 25, 26).

In Hennessy v. Automobile Owners' Ass'n (Tex. Civ. App.) 273 S. W. 1024, plaintiff sought to recover on a policy of insurance on a second-hand automobile which he had sold to one Chisholm, retaining a mortgage on the vehicle to secure notes given by the purchaser in part payment. After this sale, the defendant insurance company issued its policy on the car against fire and theft. The car was stolen and destroyed by fire, and payment on the policy was resisted on the ground that in the acquisition of the car by plaintiff and in its sale to Chisholm there had been a breach and total disregard of a penal statute requiring a sale or trade of a second-hand automobile to be evidenced by an accompanying bill of sale and other regulatory directions. Penal Code Texas 1925, art. 1435. It was held that neither the vendor nor the vendee had an insurable interest in the car, although following its theft and destruction a bill of sale was procured and recorded in belated compliance with the statute.

The same principle was recognized in Pope v. Glenn Falls Ins. Co., 136 Ala. 670, 34 So. 29, and in State ex rel. Insurance Co. v. Cox, 307 Mo. 194, 270 S. W. 113, although in that case the statute itself did expressly denounce as void a sale in violation of its terms.

As we have seen, an important rule of public policy is involved in this case. The statute (R. S. 8—118), was enacted to protect the public against fraud, to limit the amount of mischief wrought by automobile thieves, to aid in bringing such thieves to justice, and to facilitate the recovery of stolen automobiles; and it must be held that the sale and barter of automobiles in disregard of the statute confers no insurable interest on the vendee. It follows that the judgment must be reversed on the principal matter involved herein.

In anticipation of such probable conclusion of this court, the appellee seeks to make something out of the minor point that plaintiff had good title to the accessories purchased by plaintiff and attached to the car, and there should be no question of his insurable interest in them. It does not appear that this point was urged below; but, aside from that, if plaintiff had complied with the law in acquiring the automobile, the defendant would have stood some chance to recover it, accessories and all, and thus recoup its loss for whatever sum it were required to pay on this policy—whether on the car itself, or merely on the accessories. As the case stands, however, and through the

fault of the plaintiff, it has not a chance of recoupment. Granting that plaintiff's acquisition of this automobile was as thoroughly innocent of guile as his evidence disclosed, and the jury believed, his want of sophistication touching the wiles of designing men (other than bankers), and the consequences flowing therefrom, must be borne by himself, and cannot justly be transferred to the defendant insurance company.

The judgment is reversed, and the cause remanded, with instructions to enter judgment for defendant.

All the Justices concurring.

NOTE.—*Sale of Second Hand Car in Violation of Statute as Passing Insurable Interest.*—The Missouri case of State ex rel v. Cox, 306 Mo. 537, 268 S. W. 87, holds that failure to comply with the motor vehicle law relative to the sale and transfer of automobiles, in the attempted sale of a car, renders such transaction void, and no title or insurable interest passes. This case was decided under a statute expressly providing that failure to comply with its terms would render the sale fraudulent and void.

Likewise, the case of Ohio Farmers' Insurance Company v. Todino, 111 Ohio 274, 145 N. E. 25, holds that under an automobile policy providing that the insurer shall not be liable if the insured be not the sole and unconditional owner of the car, the insured cannot recover under such policy where the owner, neither at the time of procuring the insurance nor at the time the liability was claimed to have arisen, had complied with the provisions of the statute relating to the registration of automobiles.

On the other hand, the Supreme Court of Texas, in Hennessy v. Automobile Owners Insurance Association, 282 S. W. 791, holds that such a sale is not void under the Texas statute, and that the purchaser in violation of the terms of the statute acquires an insurable interest. This is the same case referred to by the Court in the reported case, the decision being by the Court of Civil Appeals, which decision was overruled by the Supreme Court as mentioned above.

On the question generally of the validity of sales of automobiles in violation of statutory requirements, see Berry, Automobiles (5th ed.) sec. 1566.

"Just think of it!" exclaimed Flora the romantic. "A few words mumbled over your head and you're married."

"Yes," agreed Dora the cynical. "And a few words mumbled in your sleep and you're divorced."—Building Owner and Manager.

Maiden Aunt—"And what brought you to town, Henry?"

Henry—"Oh, well I jus' come to see the sights, and I thought that I'd call on you first."

BOOK REVIEWS

TENNEY—ALL ABOUT NATURALIZATION

The Judy Publishing Company, Chicago, have recently published a pamphlet entitled as above, the author being Jacob Legion Tenny, L.L.B., of the Chicago Bar, and former United States Naturalization Examiner. The pamphlet is a complete and practical guide in securing United States Citizenship papers. The publishers state that to their knowledge there is not any other publication covering the field completely, plainly and in a practical, helpful manner. The book gives every step to be taken and information is informal but highly helpful. It contains questions and answers that enable the foreigner to secure an excellent idea of our governmental system. It also contains the Declaration of Independence, the Constitution and Amendments and a list of Presidents and State capitols.

SCHOULER ON WILLS, EXECUTORS AND ADMINISTRATORS

We are just in receipt of the 1926 supplement to the standard work of Schouler on Wills, Executors and Administrators, sixth edition. The publishers are Matthew Bender & Company, Albany, New York. The supplement has been prepared by Mr. Samuel W. Eager, of the Middletown, New York Bar, who is also author of Eager on Intestate Succession.

This supplement brings the Sixth Edition of Schouler, which was published in 1923, down to date, making the work for all practical purposes as good as a new edition. The supplement includes all decisions from the publication of the Sixth Edition in 1923 to date. It has the same numbered sections and note arrangement as the original volumes, so that after referring to those volumes, one may turn to the supplement and quickly obtain the later decisions. The supplement also covers much new matter not contained in the original work. It is completely indexed and is, in fact, a complete treatise on the subject for the period covered. This work has been so long recognized by the profession as a standard authority that it needs no recommendation. The supplement contains more than five hundred numbered pages and is bound in buckram.

Indian Guide—This desert is God's own country.

Tourist—Well, I'll say he certainly done his best to discourage trespassers.

DIGEST

Digest of Important Opinions of the State Courts of Last Resort and of the Federal Courts.

Copy of Opinion in any case referred to in this Digest may be procured by sending 25 cents to us or to the West Pub. Co., St. Paul, Minn.

1. **Agriculture** — Co-operative Marketing. — Co-operative marketing agreement and Bingham Co-operative Marketing Act must be construed as part of every lease of land, owned or controlled by member of co-operative association, for purpose of raising farm products, and his failure to exercise his presumed control over delivery of crops under section 18c, by seeing that tobacco raised on land is marketed according to such agreement, is violation thereof.—Dark Tobacco Growers' Co-Op. Ass'n v. Daniels, Ky., 284 S. W. 399.

2. **Arrest**—Warrant.—Arrest of defendant by police officers without warrant on suspicion of having whisky held illegal, since peace officer may arrest for misdemeanor without warrant only on view.—Edwards v. State, Ind., 152 N. E. 721.

3. **Automobiles**—Bill of Sale.—Statute as to sale of secondhand automobiles held regulatory merely, and not to prohibit sale not in compliance therewith, so that title passes, though buyer, who received state license receipt for the current year, did not obtain bill of sale from seller.—Willys-Overland v. Holliday, Tex., 284 S. W. 973.

4.——Damage by Rented Car.—Hirer of automobile is not liable for damage caused by rented car, unless he knows or should know that person hiring it is incompetent to drive it. — Saunders Drive-It-Yourself Co. v. Walker, Ky., 284 S. W. 1088.

5.——Duty of Guest.—Refusal of instruction that, if injured guest in automobile was guilty of negligence in slightest degree, directly contributing to accident, she could not recover held reversible error.—Rogers v. Ziegler, Ohio, 152 N. E. 781.

6.——Guest's Negligence.—Guest, failing to protest against speed of automobile ranging from 35 to 40 miles per hour for period of 25 seconds held not contributorily negligent as matter of law.—Bryden v. Priem, Wis., 209 N. W. 703.

7.——Invitees.—Where parties were riding in car at invitation of owner thereof who drove it, after they had casually met, and he proposed to deliver them to their respective homes held that parties were mere invitees, being engaged in no common enterprise or adventure.—Thompson v. Collins, Wash., 247 Pac. 458.

8.——Negligence. — To justify conviction for manslaughter in second degree in striking deceased with automobile, state must prove beyond reasonable doubt that defendant was guilty of more than simple negligence.—Crisp v. State, Ala., 109 So. 282.

9.——Passing Street Car.—Automobilist, in approaching to meet street car on side opposite car gates, which has stopped to receive and discharge passengers, must anticipate that some passengers may pass behind car to other side; hence must use increased care in passing.—Day v. Cunningham, Me., 133 Atl. 855.

10.——Right of Way.—Driver on left at street intersection is not required, under Laws 1923, c. 47, to yield right of way to one approaching from right, unless collision is reasonably to be apprehended.—Collins v. Liddle, Utah, 247 Pac. 476.

11. **Bailment** — Conversion. — Under Civil Practice Act, § 193, as amended by Laws 1922, c. 624, and Laws 1923, c. 250, where plaintiff sued for conversion of coat delivered for cleaning to defendant B., who turned it over to defendant S. for same purpose, and proved that it was never returned held that judgment for plaintiff against B., and for B. against S. for same amount was authorized.—McCrorken v. Spiegel, N. Y., 216 N. Y. S. 561.

12. **Bankruptcy** — Claims Against Director. — That exact amount of claims of corporation's creditors against director, under Stock Corporation Law N. Y. § 15, because of loss sustained by reason of his acts, have not been determined, and they have not been reduced to judgment, is not bar to bankruptcy proceeding against him, where the claims have been proved and allowed in bankruptcy proceeding against the corporation.—In re Post, U. S. D. C., 12 F. (2d) 941.

13.——Compensation of Receiver.—Under Bankruptcy Act § 2 (3), being Comp. St. § 9586; which authorizes the appointment of receivers to take charge of the property of an alleged bankrupt until "the petition * * * is dismissed or the trustee is qualified," compensation of a receiver so appointed is governed by the provisions of sections 48 and 72 (Comp. St. §§ 9632, 9656), which limit the amount that may be allowed by the court, whether adjudication follows or the petition is dismissed.—In re Detroit Mortgage Corporation, U. S. C. C. A., 12 F. (2d) 889.

14.——Concealing Insolvency.—Goods may be reclaimed on showing that sale was induced by material false representation, without proof that purchaser did not intend to pay.—In re Sherman, U. S. C. C. A., 13 F. (2d) 121.

15.——Mortgage.—Judgment in creditor's suit, under Civ. Code La. art. 1977, annulling mortgage and decreeing mortgaged property subject to seizure and sale by creditor to satisfy his claim held under Bankruptcy Act, § 67f (Comp. St. § 9651), annulled by bankruptcy proceedings of debtor within four months after its entry, but lien acquired by creditor on mortgaged property was subject to be preserved for benefit of estate in bankruptcy.—Campbell v. Calcasieu Nat. Bank, U. S. C. C. A., 12 F. (2d) 981.

16.——Shipment in Name of Individual.—Where an order for goods was received by seller from "L.'s Boot Shop," which was bankrupt's tradename, but through mistake, for which bankrupt was not responsible, seller believed H. to be proprietor, and shipped and billed goods to H. at address of boot shop, in the absence of fraud, seller held not entitled to reclaim the goods from the trustee.—In re Gendron, U. S. D. C., 13 F. (2d) 263.

17. **Banks and Banking** — Consolidation. — A bank, which through consolidation and without paying any consideration, took over the assets of another bank, which equaled its liabilities held liable on an obligation of the absorbed bank.—United States Fidelity & Guaranty Co. v. Citizens' Nat. Bank, U. S. D. C., 13 F. (2d) 213.

18.——Delay in Presenting Draft.—Delay for one day in presenting draft against letter of credit, due to unusual and unexpected delay in transmission of mail held excusable, in view of Negotiable Instruments Law N. Y. (Consol. Laws N. Y. c. 38) § 141.—Second Nat. Bank v. M. Samuel & Sons, U. S. C. C. A., 12 F. (2d) 963.

19.——Guaranty.—If deposit is otherwise secured, fact that security is inadequate does not transfer it, or any part thereof, to class of deposits not otherwise secured; where bond purported on face to secure bank account as whole, such ac-

count was "deposit otherwise secured," and not within protection of Bank Guaranty Act.—City of Osawatomie v. Bone, Kan., 247 Pac. 432.

20.——Payment of Note.—Where the transferee of a note, upon its face payable at a bank located in a state other than that of the payee's or the maker's residence, and which has gone into the hands of a receiver prior to the due date of the instrument, sends it, at the request of the obligor, to a bank near the latter's home for the purpose of enabling the obligor to make a payment thereon, the local bank is, for reasons stated in the opinion held to be the agent of the transferee, and the maker is not liable, in the absence of fraud or bad faith, if the local bank becomes insolvent and fails to transmit the money.—Burch v. Odell, N. D., 209 N. W. 792.

21.——Preferential Claim.—Where, after bank had assigned notes as collateral security, it issued cashier's checks payable to itself, charged their amount to accounts of its managing officers, and carried them among assets in lieu of notes, pursuant to order of bank commissioner, he'd that, on bank's insolvency, assignee was not entitled to proceeds of such cashier's checks as a trust fund, since assets of bank were not increased thereby, nor were any funds set apart which came into hands of receiver.—Mechanics & Metals Nat. Bank v. Buchanan, U. S. C. C. A., 12 F. (2d) 891.

22.——Public Funds.—Where public moneys are deposited by an officer in a bank not qualified to act as a public depositary, the relation of debtor and creditor does not come into existence, but the bank holds such moneys in trust for the depositor. —Grand Forks County v. Baird, N. D., 209 N. W. 782.

23.——Safekeeping.—Owner of note, in depositing it in bank for safe-keeping, created bailment or relation in which note was to be kept for her without recompense, and did not part with legal possession or right of control and disposition, nor give bank any power, except that of custodian for safe-keeping.—State v. Bunton, Mo., 285 S. W. 97.

24. **Bills and Notes**—Consideration.—Execution and delivery to purchaser of contract for sale of realty was sufficient consideration for purchaser's check for initial payment.—Palmer v. Golden, N. Y., 216 N. Y. S. 509.

25.——Duress.—Threats of criminal prosecution, where neither warrant was issued nor proceedings commenced, do not constitute duress voiding note in hands of alleged maker of threats.—Patrick v. J. R. Wood & Sons, Ga., 133 S. E. 870.

26.——Extension of Time.—Where one accepting check, which maker said was not covered by sufficient funds on day of execution, was acting, not for bank, to which payable, but as private messenger of bank president, with authority only to collect amount of maker's notes to bank and deliver them to maker, bank granted no extension of time for payment, so as to release indorser under Code 1919, § 5682(6).—Settle v. Browning, Va., 133 S. E. 769.

27.——Forged Indorsement.—Where a bank purchases a draft from the drawer, payable to a named person, and indorsed on the back, "We accept this draft as an advance payment on car 21348 M. K. T. By Burkes Bros. Lumber Company, per E. G. Burkes," and it is also indorsed by the drawer, and the bank guarantees all prior indorsements, and it is forwarded for collection and paid, and turns out to be a forgery, the bank is liable to the drawee for the money so paid on such guaranteed indorsements.—Philip Gruner & Bros. Lumber Co. v. First Nat. Bank, Miss., 109 So. 274.

28.——Joint Makers.—It is irregular to render judgment against only one of the makers of a promissory note which is joint, and not joint and several, without bringing the action against all. —Hamilton v. Ohio State Bank & Trust Co., Ohio, 152 N. E. 731.

29. **Bridges** — Lighting. — Operators of toll bridges, inviting their use by public at night, must exercise ordinary care to so light whole structure as to provide reasonably safe means of travel to public.—Louisville & N. R. Co. v. Loesch, Ky., 284 S. W. 1097.

30. **Brokers** — Commission. — Defendants, who agreed, in contract for sale of realty, to pay commission to real estate brokers "if and when the title passes and the consideration is paid," held liable to brokers for services in procuring purchaser, notwithstanding defendants were unable to convey title.—O'Connell v. Ryan, N. Y., 216 N. Y. S. 590.

31. **Carriers of Goods**—Common Carrier.—One hauling freight by truck for over 90 per cent of shippers in his territory, maintaining storage and transfer station, insuring goods transported, and charging regular rates, based on weights and mileage held a common carrier, notwithstanding all such shippers were members of "merchants' and manufacturing association" organized by him as mere scheme to evade law, since proportion of public served was so large as to be "public."—Davis v. People, Col., 247 Pac. 801.

32.——Delivery.—Cars delivered on tracks alongside dock space leased by shipper held not "on or about" leased premises, within clause of lease whereby lessee assumed risk of loss by fire "on or about said leased premises," so as to exempt carrier from liability loss by fire; "on or about" meaning anywhere or everywhere on, but not outside of, locus.—Pillsbury Flour Mills Co. v. Erie R. Co., N. Y., 216 N. Y. S. 486.

33. **Carriers of Passengers**—Gratuitous Pass.—If caretaker's pass was given as consideration of contract of shipment, he was passenger for hire, and release of carriers from liability due to negligence is invalid.—Miller v. Maine Cent. R. Co., Me., 133 Atl. 907.

34.——Negligence.——Petition alleging that defendant negligently opened rear door of street car, and suddenly checked speed of car while door was open, causing passenger to be thrown from car to street, held to state cause of action, when attacked after verdict, without alleging that movement of car was unusual.—Goodwin v. Wells, Mo., 285 S. W. 112.

35.——Negligence.—Motorbus passenger suing for injuries, alleging that there was an extraordinary and unusual jolt of the car, thus making a prima facie case entitling her to invoke rule of res ispa loquitur, by further alleging that automobile skidded and hit curb thereby destroyed prima facie case by showing specific act which caused accident, and, there being no evidence to show that such specific act was negligent, plaintiff failed to make a case for consideration of the jury.—Heidt v. People's Motorbus Co., Mo., 284 S. W. 840.

36.——Negligence.—That intending passenger, while standing in safety zone preparatory to boarding car, was injured when approaching car stopped suddenly and glass fell from window cutting her face held not to raise presumption of law that street car company was negligent, thus placing burden on it to overcome presumption.—Cleveland Ry. Co. v. Sutherland, Ohio, 152 N. E. 726.

37.——Pullman Surcharge.—That two railroads in state were earning more than return fixed by Interstate Commerce Commission held not ground for removal of intrastate Pullman surcharge, in view of Transportation Act Feb. 28, 1920 (U. S. Comp. St. Ann. Supp. 1923, § 10071¼ et seq.), subjecting excess to pro rata recapture for pro rata benefit of all roads in same rate group.—Atlantic Coast Line R. Co. v. Commonwealth, Va., 133 S. E. 883.

38. **Contracts** — Arbitration. — Arbitration Law (Laws 1920, c. 275) as amended by Laws 19921, c. 14, does not change fundamental principles of arbitration except removal of ban on general and executory agreements to arbitrate future differences under sections 2, 3.—Webster v. Van Allen, N. Y., 216 N. Y. S. 552.

39. **Corporations** — Authority of Manager. — Where manager of oil station for a long time deposited city warrants, indorsed with rubber stamp "for exchange payable to" principal, in manager's personal account, from which account manager was accustomed to settle with company, latter held estopped to question right of bank to so handle warrants under such indorsement.—Texas Co. v. Commercial Sav. Bank, Col., 247 Pac. 558.

40.——Fraudulent Act of Director.—Rule that directors are bound to act solely for corporation has no application, where director pretends to act for third party to gain undue advantage for it, and it cannot defend against fraudulent acts in

its own behalf by contending that director had fiduciary duty to it.—Reed v. A. E. Little Co., Mass., 152 N. E. 918.

41.——Payment for Stock.—Payments under contract of sale of corporate stock to become due after payment of mortgages on property held not to become due on giving of renewal mortgages.—Palmer v. Emanuel, Cal., 247 Pac. 609.

42.——Sale of Stock.—Seller of stock is bound by warranties as to corporation's liabilities, notwithstanding buyers had superior knowledge and were better acquainted with corporation's business.—Kimbrell v. Taylor, S. C., 133 S. E. 829.

43.——Warranty as to Liabilities.—Agreement for sale of corporate stock, providing, "the foregoing sale is based on the statement heretofore given by sellers to buyers, approximating assets $123,098.43, liabilities $26,022.55," held an express warranty with reference to liabilities.—Kimbrell v. Taylor, S. C., 133 S. E. 829.

44. **Deeds**—Delivery.—Deeds, warranty in form and unconditional, deposited with bank for delivery to grantees after grantor's death held not testamentary dispositions.—Plymale v. Keene, Mont., 247 Pac. 554.

45. **Employers' Liability Act**—Right of Action.—In an action under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657—8665), the proceedings considered, and a previous decision in the same case (Goodyear v. Davis, 114 Kan. 557, 220 P. 282, 39 A. L. R. 563; Id., 115 Kan. 20, 220 P. 1049, 39 A. L. R. 563) holding that "the federal Employers' Liability Act creates a right of action in the injured employee for his suffering and loss resulting from the injury, and also creates a distinct and independent right of action in the personal representative of the deceased employee, in the event death results from the injury, for the benefit of certain designated dependents" followed and adhered to.—Goodyear v. Davis, Kan., 247 Pac. 446.

46. **Fraud**—Admissible Evidence.—Where buyer of motor truck alleged seller falsely represented that buyer could pay for truck out of hauling contract, evidence of similar transactions by seller held improperly excluded.—Butler-Veitch v. Barnard, Cal., 247 Pac. 597.

47. **Fraudulent Conveyances** — Annulment. — Creditor, who procured annulment of fraudulent mortgage by suit, under Civ. Code La. art. 1977, is not entitled to be subrogated to position of mortgagee, nor entitled to secured claim in bankruptcy of mortgagor.—Campbell v. Calcasieu Nat. Bank, U. S. C. C. A., 12 F. (2d) 981.

48. **Gifts**—Causa Mortis.—In action on certificate of deposit claimed by plaintiffs as gift causa mortis, finding that donor believed it necessary to indorse certificate did not show lack of present intention to relinquish title to funds, in view of fact that donor directed them to get money to pay his funeral expenses and to keep remainder.—Nestlerode v. Commercial Nat. Bank, Kan., 247 Pac. 866.

49. **Insurance**—Accidental Means.—Death from gangrene, caused by stubbing toe on stairway, should be attributed to accident within terms of policy insuring for injury or death, solely by external violence and accidental means, although policy did not cover accidental bodily injury caused or contributed to directly or indirectly by sickness or disease.—U. S. Casualty Co. v. Thrush, Ohio, 152 N. E. 796.

50.——Falsehood in Application.—A false denial in an application for accident and health insurance of a previous rejection of the applicant for life insurance is material to the risk, and renders invalid a policy issued thereon.—Columbian Nat. Life Ins. Co. v. Harrison, U. S. C. C. A., 12 F. (2d) 986.

51.——"Highway Robbery." — Where assured, while moving through a crowd on battleship in outer harbor of San Pedro, felt a hand against her chest as it grabbed her bar pin, but did not see the hand or any suspicious move held taking was not covered by rider extending policy insuring against robbery from residence to cover "highway robbery" from assured anywhere in United States by force or violence, in view of provision excluding from protection disappearance of property without force or violence or without knowledge of assured at time.—Anderson v. Hartford Accident & Indemnity Co., Cal., 247 Pac. 507.

52.——Increase of Hazard.—Ordinarily, question of increase of hazard within fire insurance policy is one of fact, but installation of stills and storing large quantities of alcohol was increase of hazard as matter of law.—Coffaro v. Queen Ins. Co., N. Y., 216 N. Y. S. 564.

53.——Mortgage.—If mortgagor, after executing mortgage requiring insurance policy, takes insurance payable to himself, mortgagee has equitable lien thereon in event of loss.—Farmers' & Merchants' Nat. Bank v. Moore, S. C., 133 S. E. 913.

54.——Payment of Premiums.—Clause attached to fire policy, "Condition one—in case the mortgagor or owner shall neglect to pay any premium due under this policy, the mortgagee shall on demand pay the same," held not covenant which would require payment by mortgagee in action by insurer's assignee after insured failed to pay, in absence of express or implied promise.—Schmitt v. Gripton, Cal., 247 Pac. 505.

55.——Rider.—Rider attached to fire insurance policy, providing that policy should not be invalidated by any act or neglect of other occupant of building held to deprive insurer of defense that risk was increased by tenant of building with knowledge and consent of insured, or by means within his control, and to require all presumptions to be indulged in insured's favor.—Coffaro v. Queen Ins. Co., N. Y., 216 N. Y. S. 564.

56.——Theft of Rented Automobile.—No recovery can be had for theft of rented automobile on policy providing against liability for loss occurring while it was rented or leased.—Brown v. International Indemnity Co., Kan., 247 Pac. 432.

57.—Total Disability.—"Total disability" is an impairment of mind or body rendering it impossible for disabled person to follow continually any substantial occupation, and is deemed permanent when founded on conditions rendering it reasonably certain throughout life of person suffering from it.—Starnes v. United States, U. S. D. C., 13 F. (2d) 212.

58. **Interstate Commerce**—Empty Freight Car.—Empty foreign freight car is engaged in interstate commerce, even before being reloaded, when it begins movement back to point at which received by carrier, or is definitely designated and started on way to receive interstate freight.—Mappin v. Atchison, T. & S. F. Ry. Co., Cal., 247 Pac. 911.

59.——Installing Equipment. — Installation of glass-lined condensing tanks by employe of unlicensed foreign corporation, held, by reason of technical nature and complexity of mechanism, to involve an interstate transaction making contract of sale enforceable.—Pfaudler Co. v. Westphal, Wis., 209 N. W. 700.

60. **Joint Stock Companies and Business Trusts**—Stockholder's Liability.—That cashier of bank which took note of and extended credit to corporation had full knowledge that the declaration of trust under which the corporation operated provided that stockholders should not be personally liable for debts of corporation does not relieve stockholder from personal liability.—Chapman v. Witt, Tex., 285 S. W. 331.

61. **Master and Servant**—Assumption of Risk.—Where plaintiff, a brakeman, was injured during a switching operation by striking against a gas tank left standing on an adjoining track within two feet of the switching track, it was a question for the jury whether defendant was negligent in leaving the gas tank in such dangerous position and also whether plaintiff knew of it and assumed the risk.—Youngstown & O. R. R. Co. v. Halverstodt, U. S. C. C. A., 12 F. (2d) 995.

62.——Assumption of Risk.—Member of track crew unloading rails assumed risk of rail rolling against leg from pile in car as result of force of gravity or ordinary stopping of train.—Richards v. Maine Cent. R. Co., Me., 133 Atl. 911.

63.——Breach of Contract.—Where party to contract of employment obligates himself either expressly or impliedly not to disable himself from continuing employment for stipulated time, he is liable for damages for breach if, by sale of busi-

ness before expiration of stipulated period, he voluntarily put it out of his power to continue employment to end of its term in manner agreed by him.—Langenberg v. Guy, Cal., 247 Pac. 621.

64.——Injury in Railroad Yard.—Where, upon a trial for damages for personal injuries under the federal Employers' Liability Act (U. S. Comp. St. §§ 8657—8665), there is an issue whether the plaintiff, a brakeman, was engaged in interstate or intrastate commerce, the evidence tends to show that such brakeman is employed in moving, within a railroad yard, loaded cars which are in use in interstate commerce, and after commencing such movement, before final delivery of such interstate cars, such work is suspended a short time to enable the crew to remove certain empty cars from a warehouse track for the purpose of placing on such warehouse track the interstate cars, in the position then occupied by the empty cars, and also for the purpose of carrying out orders to transport such empty cars to another point in the same state in intrastate commerce, and said brakeman is injured just as he is in the act of going upon the warehouse track to secure the empty cars for both of the above-named purposes, a motion for a directed verdict finding that the brakeman is engaged in intrastate commerce should be denied and the question submitted to the jury under proper instructions.—Mellon v. Weber, Ohio, 152 N. E. 753.

65.——Injury to Chauffeur.—Automobile owner, sued by chauffeur for injuries resulting from alleged defective brakes and gasoline feed line, is in no position to assert that chauffeur was guilty of negligence per se in operating automobile not equipped with adequate brakes as required by Laws 1921, Ex. Sess. p. 99, § 23c, as such section refers to equipment which defendant was required to provide.—Plannett v. McFall, Mo., 284 S. W. 850.

66.——Seniority Rights.—Orders of railroad appointing superintendent for two divisions, with headquarters at a certain point, and appointing an assistant superintendent of one of the divisions, with headquarters at another point, and unifying certain employments of both divisions held not to effect a consolidation of both divisions into one division so as to give conductor on one division seniority rights on both divisions.—U'Renn v. Great Northern Ry. Co., Wash., 247 Pac. 726.

67.——Status of Truck Driver.—Where seller of hay, to be delivered by him, told driver of truck furnished by him to keep hauling hay from seller's barns to buyer's warehouse so long as he could make enough loads per week to keep buyer supplied, and would have terminated employment if deliveries were not made to buyer's satisfaction or driver had overloaded truck or run it without water or proper oiling, driver was servant, for whose negligent operation of truck seller was liable.—King v. Galloway, Tex., 284 S. W. 942.

68.——"Vice Principal."—Chain man giving signals to start crane, whose orders injured employee was directed to obey, while working with his crew held not fellow servant, but "vice principal," for whose negligence master must respond.—Daggett v. American Car & Foundry Co., Mo., 284 S. W. 855.

69. **Municipal Corporations**—Repeal of Charter.—Charter is not contract between state and municipality, and state may, if it chooses, repeal charter and destroy corporation.—Richmond, F. & P. R. Co. v. City of Richmond, Va., 133 S. E. 800.

70.——Street Lighting.—City, operating street lights, but not conducting light plant for profit, or selling light to inhabitants, is engaged in proprietary rather than governmental business as respects liability.—Rowan v. City of Galveston, U. S. D. C., 13 F. (2d) 257.

71. **Negligence**—Charge to Jury.—Charge on duty of owner of property on which falling tree was situated to ordinary care for safety of pedestrians using sidewalk held sufficiently favorable to person injured.—Gschwind v. Viers, Ohio, 152 N. E. 911.

72.——Liability of Manufacturer.—The manufacturer of a chain, designed to support heavy weights and represented to be sufficient therefor, is liable to a user, injured through its defective construction, though it was bought from a dealer.—Employers' Liability Assur. Corporation v. Columbus McKinnon Chain Co., U. S. D. C., 13 F. (2d) 128.

73.——Safety Device on Windows.—Evidence that building owner failed to equip window, from which window washer fell, with hooks for safety belt, when some of other windows were so equipped held to make issue of owner's negligence for jury.—Dougherty v. Pratt Institute, N. Y., 216 N. Y. S. 441.

74.——Slippery Floor.—In action by customer against storekeeper for injuries from falling on step between toilet and washroom, alleged to have been slippery by reason of accumulation of water, evidence held sufficient to make case for jury on question of defendant's negligence in permitting water to collect and remain on the floor.—Scott v. Kline's, Inc., Mo., 284 S. W. 831.

75. **Nuisance**—"Hot Dog" Stand.—Maintenance in strictly residence district of refreshment booth or "hot dog" stand, which was kept open until midnight and attracted many patrons, who overran plaintiffs' property, trampled grass, threw papers and refuse on lawns, engaged in loud and boisterous talk late at night, and disturbed sleep of residents, and giving off odor from cooking sausages, which permeated neighborhood, to discomfort and annoyance of residents, will be enjoined as nuisance, notwithstanding annoyance is intermittent and not constant.—Andrews v. Perry, N. Y. 216 N. Y. S. 537.

76. **Oil and Gas**—Assignment of Lease.—In a contract of assignment of an oil and gas lease, which reserves to the assignor out of the working interest assigned a certain fractional part of the oil and other mineral produced, but which does not in express terms bind and obligate the assignee to, at any time, drill for or produce oil upon the premises covered by the lease assigned, an implied covenant on the part of the assignee to protect the lines from drainage by drilling offset wells does not arise in favor of the assignor so as to make the assignee liable in damages for a failure to drill the offset wells.—Kile v. Amerada Petroleum Corporation, Okla., 247 Pac. 681.

77.——Cancellation of Lease.—In lease of land solely for mining and operation for oil, and chiefly in consideration of royalties, lessee has a determinable fee, ending and authorizing cancellation, on abandonment.—W. T. Waggoner Estate v. Sigler in development, though there be no complete abondonment.—W. T. Waggoner Estate v. Sigler Oil Co., Tex., 284 S. W. 921.

78. **Physicians and Surgeons**—Certificate of Qualification. — Treatment designed to remove cause of disease followed as profession for pay is treatment of disease within law, for which examination and certificate of qualification is required under Code 1923, § 2837.—Donovan v. State, Ala., 109 So. 290.

79.——Chiropractors.—Statutes, including Code 1923, §§ 2837, 2839, prescribing qualifications for engaging in treating diseases of human beings, providing for examination, and prescribing penalties for treating without license held to apply to chiropractors.—Harris v. State, Ala., 109 So. 291.

80. **Sales**—Import Duty.—Where broker, in negotiations for purchase of sugar, emphasized necessity of sellers furnishing customs certificates stating that sugar was not "bounty-fed" for sugar imported into France, to avoid heavy French duty, and bought and sold note called for "Cuban cane sugar," held, that risk of including Costa Rica sugar, classed as "bounty-fed" in France, but not in United States, was on sellers, and they were liable to buyer for damages resulting from imposition of heavy French duty.—Comptoir Commercial D'Importation v. Zabriskie, N. Y., 216 N. Y. S. 473.

81.——Warranty.—In the absence of contract which negatives the same, there is an implied warranty in the sale of gasoline pump that it is suitable to perform the ordinary work for which it was made.—Wayne Tank & Pump Co. v. Harper, Okla., 247 Pac. 985.

82.——Warranty.—When the uncontradicted evidence in support of a cross-petition for damages for breach of warranty against defective material in a motor truck shows that the damages may have resulted because of defective material, or may have resulted from the negligence of the operator of the truck, and that one cause was just as probable as the other, it is not error to direct a verdict against the cross-petitioner.—Lampe v. White Motor Sales Co., Ohio, 152 N. E. 733.

83. **Searches and Seizures**—Unsigned Affidavit. —Under Civ. Code Prac. § 551, requiring every affidavit to be subscribed by affiant, and to have certificate of officer before whom it was made written separately following signature of affiant, affidavit on which search warrant was based which was not signed by affiant held void, though officer's certificate recited that it was subscribed and sworn to before him.—Wolford v. Commonwealth, Ky., 284 S. W. 1116.

84.——Warrant.—Affidavit for search warrant, dated the day after date in warrant, need not be amended, where evidence showed that search warrant was based on such affidavit, and date was mere oversight; search warrant itself being judicial determination that it was founded on proper affidavit.—Hendricks v. State, Miss., 109 So. 263.

85. **Statutes**—Injuries to University Student.—Laws 1925, p. 416, assuming limited liability to university student for injuries from negligence of state agent held not violative of Const. art. 12, § 11, requiring taxes to be levied and collected by general laws for public purpose only.—**Mills v.** Stewart, Mont., 247 Pac. 332.

86. **Taxation**—National Bank.—Petition by national bank against city to enjoin collection of tax, alleging that other individuals and corporations owned investments on which city made no levy for taxation, but which did not allege that their moneyed capital was used in competition with plaintiff bank held not to state cause of action within Rev. St. U. S. § 5219, as amended (U. S. Comp. St. Supp. 1925, § 9784).—City of Richmond v. Madison Nat. Bank & Trust Co., Ky., 284 S. W. 1089.

87. **Theaters and Shows** — Reasonable Care. — Circus held not liable, under doctrine of respondeat superior, for injury to spectator at ball game played by employees outside hours of employment.—Easler v. Downie Amusement Co., Me., 133 Atl. 905.

88. **Wills**—Intent.—Under will devising real estate to daughter and two grandchildren "share and share alike," held that grandchildren take per capita and not per stirpes, where testator's intention that each take one-third is discoverable from will.—Conn v. Hardin, Ky., 284 S. W. 1077.

89.——Military Service.—Enlisted soldier during World War, who had been sent to various camps in country, and, just before being sent abroad for active service, mailed letter to his mother, stating it to be his last will held to be "in actual military service" within Wills Act, § 18, excepting such persons from other provisions of act relating to testamentary disposition.—In re Straulina's Estate, N. J., 134 Atl. 88.

90.——Termination of Life Estate.—Where testator provided that, at decease of life tenants, property should be sold and equally divided between legal heirs (meaning children) of testator's' brothers and sisters, children took per capita, and not per stirpes, in view of provision for equal division.—Driskill v. Carwile, Va., 133 S. E. 733.

91.——Trust Fund.—Under will devising property to trustee to be applied to maintenance and support of testator's wife and children, trustee was proper person to determine whether son was capable of caring for and entitled to receive principal of trust estate after death of other beneficiaries.—Kukielski v. Kukielski, N. J., 133 Atl. 881.

92.——Validity.—That testator does not measure up to approved standard in morality does not deprive him of right to dispose of property as he pleases so long as will expresses his free intent and purpose.—In re Golz's Will, Wis., 209 N. W. 704.

93.——Vested Interest.—Under will directing distribution of fund, set apart during life of testator's wife, among his children surviving her, or their issue on her death, no right vested in children during her life.—Lorillard v. Kent, N. J., 133 Atl. 881.

94. **Workmen's Compensation**—Course of "Employers' Business."—Construction of toilet for use of employer's servants and customers reasonably necessary in operation of public garage is employment in "usual course" of employer's business, within meaning of Workmen's Compensation Act, § 76b, as amended by Laws 1919, p. 175.—Wagner v. Wooley, Ind., 152 N. E. 856.

95.——Death from Fall.—Death of employe either from concussion of brain caused by fall while hauling rock for employer, or from disease hastened by employment, entitles dependents to compensation.—Owens v. McWilliams, Ind., 152 N. E. 841.

96.—Injury to Longshoreman.—Under Workmen's Compensation Law (Or. L. §§ 6614, 6615, 6617 [1], and section 6619), longshoreman working from dock to ship and vice versa in unloading freight was entitled to compensation for injury sustained while trucking load on dock, where he and employer had accepted terms of law.—Shea v. State Industrial Acc. Commission, Ore., 247 Pac. 770.

97.—Opera Singer "Employee."—Where there was implied agreement that, if singer should continue to rehearse satisfactorily, and obey reasonable directions of those in charge of rehearsals, and appear in the performance, she would receive an agreed compensation, compliance therewith made her an "employee," within Compensation Act (G. L. c. 152, § 1, cl. 4).—Cameron v. State Theatre Co., Mass., 152 N. E. 880.

98.——"Proximate Cause."—If condition of deceased employee was such as to predispose him to attack of apoplexy from previous injury, and if such result followed naturally therefrom, the original injury could be accounted as the "proximate cause" of the final result (citing Words and Phrases, Second Series, "Proximate Cause"). — United States Casualty Co. v. Matthews, Ga., 133 S. E. 875.

99.——Course of Employment.—Death of carpenter for mining company, electrocuted by cable charged as result of defective insulation, while leaving company's property after work by shortcut which employees were not forbidden to use, but which was used without employer's knowledge held to arise in course of employment within Industrial Act, § 3113, as amended by Laws 1919, c. 63, since "in the course of" refers to time, place and circumstances of death as distinguished from "arising out of," which refers to origin or cause.—Utah Apex Mining Co. v. Industrial Commission, Utah, 248 Pac. 490.

100.——Employee of Partnership.—For reasons stated in the opinion, it is held that a workman, who is hired by a member of a copartnership to work as a mechanic in a garage owned and operated by the partnership, and whose wages are paid by the member of the partnership who hired him out of her share of the net profits of the partnership earnings, is an employee of the partnership, and entitled to be compensated out of the Workmen's Compensation Fund as an employee of the partnership for injuries sustained by him in the course of his employment.—Klemmens v. N. D. Workmen's Compensation Bureau, N. D., 209 N. W. 972.